

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MENTAL HYGIENE LEGAL SERVICE,

Plaintiff,

- against -

ELIOT SPITZER, in his official capacity as Governor of the State of New York, ANDREW CUOMO, in his official capacity as Attorney General of the State of New York, MICHAEL HOGAN, in his official capacity as Commissioner of the New York State Office of Mental Health, DIANA JONES RITTER, in her official capacity as Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities, and BRIAN FISCHER, in his official capacity as Commissioner of the New York State Department of Correctional Services,

Defendants.

STATEMENT

Docket Number
07-CV-2935 (GEL)
(THK)

RICHARD MIRAGLIA states under penalty of perjury that the following is true and correct:

1. I am employed by the New York State Office of Mental Health ("OMH") as the Associate Commissioner, Division of Forensic Services for the Office of Mental Health in Albany, New York.

2. I am making this statement in opposition to the Plaintiff's motion for a preliminary injunction enjoining certain aspects of New York's Sex Offender Management and Treatment Act ("SOMTA" or "the Act").

3. My duties include the oversight and management of the Sex Offender Risk Assessment and Record Review Unit within the Division of Forensic Services. I am making this statement on my personal knowledge and on information and belief, the bases for which are my review of documents maintained by OMH and my communications with employees of OMH, the Office of the Attorney General ("OAG"), the Office of Mental Retardation and Developmental

Disabilities ("OMRDD"), the Department of Correctional Services ("DOCS"), and the Division of Parole ("Parole").

4. Under SOMTA, when it appears to OMH, OMRDD, or DOCS that a person who may be a detained sex offender is nearing an anticipated release, the agency is required to notify the Commissioner of OMH and OAG. N.Y. Mental Hyg. Law § ("MHL") 10.05 (b). Parole may give notice that a person subject to its supervision is a detained sex offender nearing an anticipated release. MHL 10.05 (d).

5. The Commissioner of OMH is authorized to designate multidisciplinary staff to "provide a preliminary review of the need for detained sex offenders to be evaluated under the procedures of this section." MHL 10.05 (d). Upon that review and assessment, the multidisciplinary staff determines whether each person who is the subject of a notice should be referred to a Case Review Team ("CRT") for an evaluation. MHL 10.05 (d). When a detained sex offender is referred to the CRT for an evaluation he or she is referred to as a "respondent." MHL 10.03 (n).

6. When the Sex Offender Risk Assessment and Record Review unit receives an MHL 10.05 (b) notice which has been made from an agency to the Commissioner and the OAG that a person may be a detained sex offender for whom referral to a CRT is appropriate, its multidisciplinary staff provides a preliminary review of the need to refer the person for evaluation by a CRT. Following CRT evaluation, each CRT issues its determination.

7. Between April 13, 2007, when SOMTA became effective, and May 31, 2007, there have been 199 MHL 10.05 (b) notices referred to the Multidisciplinary Team. Of this number, 175 referrals, or about 88 percent, have been received from DOCS, 22, or about 11

percent, have been received from Parole, and two, or about one percent, have been received from OMH.

8. Of the 199 referrals, 35, or about 17.6 percent, have been referred to the CRT.

9. Of these 35, the CRT found that 18, or 51 percent of the referrals to the CRT, and 9 percent of all referrals, have been sex offenders requiring civil management.

10. The CRT determined that 12, or 34 percent of the referrals to the CRT, and 6 percent of all referrals, were not sex offenders requiring civil management.

11. The CRT is still awaiting the results of the examination of the respondents in 5 cases, which are 14 percent of the referrals to the CRT, and 2.5 percent of all referrals.

12. A copy of my signature, sent by electronic or facsimile transmission, may be treated as the original for the purpose of serving and filing this Statement, and the original will be provided if required.

Dated: Albany, N.Y.
May 16, 2007



RICHARD MIRAGLIA